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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA 20-CR-6093(G)  
  
vs.  
  
FRANK SALERNO, Rochester, New York  
Defendant. July 9, 2020  
10:01 a.m.  
- - - - -X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE FRANK P. GERACI, JR.  
UNITED STATES DISTRICT CHIEF JUDGE

JAMES P. KENNEDY, JR., ESQ.  
United States Attorney  
BY: KYLE P. ROSSI, ESQ.  
Assistant United States Attorney  
500 Federal Building  
Rochester, New York 14614  
  
MARIANNE MARIANO, ESQ.  
Federal Public Defender  
BY: JEFFREY CICCONE, ESQ.  
Assistant Federal Public Defender  
28 East Main Street, Suite 400  
Rochester, New York 14614  
Appearing on behalf of the Defendant

COURT REPORTER: Christi A. Macri, FAPR-RMR-CRR-CSR(NY/CA)  
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P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE COURT:** Good morning.

**THE DEFENDANT:** Good morning.

**THE CLERK:** This is 20-CR-6093, U.S. vs. Frank Salerno. Kyle Rossi is here for the Government.

Jeff Ciccone is here for the defendant.

And Mr. Salerno appears by Zoom for a plea.

**THE COURT:** Are you Frank Salerno?

**THE DEFENDANT:** Yes.

**THE COURT:** Can you hear us, Mr. Salerno?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** Okay. If at any time you have to ask Mr. Ciccone any questions, you need to talk to him privately, you can be placed in a separate breakout room at that point.

Do you understand that?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** Okay. This matter is by way of video conference. Mr. Salerno, are you consenting to have this matter by way of video conference?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** I advise all the parties that they may not record, reproduce, or rebroadcast any part of this hearing. To violate that order could be a contempt of court.

1                   This matter is on for a potential plea.

2                   Mr. Ciccone, is your client ready to proceed?

3                   **MR. CICCONE:** Yes, Your Honor.

4                   **THE COURT:** Okay. Mr. Salerno, over the next

10:18:53AM 5                   several minutes I'll be asking you a series of questions. You

6                   will be placed under oath. If you fail to give any truthful

7                   responses, do you understand you could be charged with a

8                   separate crime of perjury?

9                   **THE DEFENDANT:** Yes, Your Honor.

10:19:07AM 10                   **THE COURT:** Please place the defendant under oath.

11                   (WHEREUPON, the defendant was sworn).

12                   **THE COURT:** Mr. Salerno, how old are you?

13                   **THE DEFENDANT:** 30, turning 31.

14                   **THE COURT:** How far did you go in school?

10:19:35AM 15                   **THE DEFENDANT:** High school.

16                   **THE COURT:** Completed high school?

17                   **THE DEFENDANT:** Yes, Your Honor.

18                   **THE COURT:** Are you taking any medications or drugs?

19                   **THE DEFENDANT:** I'm taking some meds for anxiety.

10:19:47AM 20                   **THE COURT:** Do you know what that is?

21                   **THE DEFENDANT:** Not right off the top of my head.

22                   **THE COURT:** Is that medication in any way affecting  
23                   your ability to understand these proceedings?

24                   **THE DEFENDANT:** No, Your Honor.

10:19:58AM 25                   **THE COURT:** Do you have any other health or medical

1 condition affecting your ability to understand these  
2 proceedings?

3 **THE DEFENDANT:** No, Your Honor.

4 **THE COURT:** Is anybody forcing you, coercing you or  
10:20:09AM 5 threatening you to enter a plea of guilty?

6 **THE DEFENDANT:** No, Your Honor.

7 **THE COURT:** Have you had the opportunity to discuss  
8 this matter with your attorney Mr. Ciccone?

9 **THE DEFENDANT:** Yes, Your Honor.

10:20:20AM 10 **THE COURT:** Are you satisfied with his  
11 representations?

12 **THE DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** Do you understand you have a right to an  
14 attorney throughout these proceedings right through the time  
10:20:29AM 15 of sentencing?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** Do you understand you have a right to  
18 persist or continue your plea of not guilty?

19 **THE DEFENDANT:** Yes, Your Honor.

10:20:40AM 20 **THE COURT:** However, when you do plead guilty you  
21 give up certain rights, including your right to have a trial  
22 by jury or judge.

23 **THE DEFENDANT:** I understand, Your Honor.

24 **THE COURT:** You also give up your right to allow  
10:20:53AM 25 your attorney to cross-examine witnesses on your behalf.

1                   **THE DEFENDANT:** I understand, Your Honor.

2                   **THE COURT:** You give up your right to have the  
3 Government prove this case against you beyond a reasonable  
4 doubt.

10:21:05AM 5                   **THE DEFENDANT:** I understand, Your Honor.

6                   **THE COURT:** If the matter did go to trial, do you  
7 understand you could testify, present evidence, and subpoena  
8 witnesses for trial?

9                   **THE DEFENDANT:** I understand, Your Honor.

10:21:16AM 10                   **THE COURT:** However, you cannot be compelled to do  
11 any of that because you have a presumption of innocence, and  
12 the burden of proof rests on the Government to prove your  
13 guilt beyond a reasonable doubt.

14                   Do you understand that as well?

10:21:29AM 15                   **THE DEFENDANT:** Yes, Your Honor.

16                   **THE COURT:** Okay. Next I'm going to go through this  
17 plea agreement with you. Again, if there's any point where  
18 you do not understand anything, please take the opportunity to  
19 ask your attorney.

10:21:40AM 20                   First of all, this calls for you to waive  
21 indictment. What that means is you're giving up your right to  
22 have this matter presented to a grand jury and instead you're  
23 agreeing to be prosecuted by way of an information filed by  
24 the United States Attorney charging you with receipt of child  
10:22:01AM 25 pornography.

1 Do you understand that?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Do you understand that charge carries a  
4 mandatory minimum term of imprisonment of five years and a  
10:22:13AM 5 maximum term of 20 years, a fine up to \$250,000, a \$100  
6 special assessment, and a term of supervised release of five  
7 years up to life?

8 Do you understand that?

9 **THE DEFENDANT:** Yes, Your Honor.

10:22:27AM 10 **THE COURT:** Do you understand in this case the Court  
11 must impose an assessment of not more than \$17,000 for this  
12 particular conviction?

13 Do you understand that?

14 **THE DEFENDANT:** Yes, Your Honor.

10:22:41AM 15 **THE COURT:** Do you understand if you're sentenced to  
16 a period of supervised release and you violate the conditions  
17 of supervised release, you could receive up to two years  
18 imprisonment without receiving credit for the time you already  
19 served on supervised release?

10:23:02AM 20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** If while on supervised release you  
22 commit certain violations articulated in this plea agreement  
23 which would call for a sentence of greater than one year to be  
24 imposed, do you understand based upon a violation of the  
10:23:19AM 25 conditions of supervised release you could be sentenced to a

1 term of imprisonment of not less than five years up to life?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Based upon a conviction of this  
4 particular charge, do you understand you need to register as a  
10:23:39AM 5 sex offender under the Sex Offender Registration and  
6 Notification Act?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** That means notify the parties where you  
9 may reside, be employed, or attend school.

10:23:52AM 10 Do you understand that?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Next I want to discuss with you the  
13 elements of this charge. This is what the Government would  
14 need to prove beyond a reasonable doubt before you could be  
10:24:05AM 15 convicted at trial.

16 First they would have to prove that you as the  
17 defendant knowingly received a visual depiction.

18 Second, that the visual depiction had been shipped  
19 or transported in or affecting interstate or foreign commerce  
10:24:25AM 20 using any means or facility of interstate or foreign commerce;  
21 or had been shipped or transported in or affecting interstate  
22 or foreign commerce by any means, including by computer.

23 Third, that the visual depiction was child  
24 pornography.

10:24:47AM 25 And, fourth, that you as the defendant knew what

1 you received constituted child pornography.

2 Do you understand those elements?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** Next I want to discuss with you what the

10:25:00AM 5 Government alleges is your involvement in this criminal

6 activity. This indicates that between June 21st, 2019, and

7 November 26th, 2019, that you the defendant were between the

8 ages of 29 and 30, residing in the State of Massachusetts.

9 You engaged in sexually explicit conversations by

10:25:31AM 10 way of Instagram with a 14-year-old female who was in the

11 Western District of New York; is that correct?

12 **THE DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** And at that time you were aware that the

14 victim was a minor that you communicated with; is that

10:25:48AM 15 correct?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** Okay. Tell me in your own words what

18 happened. What did you do?

19 **THE DEFENDANT:** I just -- we were talking and then

10:26:00AM 20 everything just kind of went more, more deeper than it should

21 have.

22 **THE COURT:** Okay. What do you mean by that? Just

23 tell me in your own words.

24 **THE DEFENDANT:** We started getting all, like,

10:26:12AM 25 attached to each other and then, like, we shouldn't have been.



1           **THE COURT:** Then what?

2           **THE DEFENDANT:** We shouldn't have obviously.

3           **THE COURT:** Okay. You knew at the time that she was  
4 approximately 14 years of age?

10:26:29AM 5           **THE DEFENDANT:** Yes, Your Honor.

6           **THE COURT:** Okay. You were 29 or 30; is that right?

7           **THE DEFENDANT:** Yes, Your Honor.

8           **THE COURT:** Okay. Now, did you -- knowing that the  
9 victim was a minor, 14 years of age, did you persuade, induce  
10 or entice her to engage in sexually explicit conduct?

11           **THE DEFENDANT:** Yes, Your Honor.

12           **THE COURT:** Specifically what?

13           **THE DEFENDANT:** Just touching herself. That was it.

14           **THE COURT:** Okay. And did you have her take  
10:27:00AM 15 pictures of that?

16           **THE DEFENDANT:** Yes, Your Honor.

17           **THE COURT:** When you say "touching herself,"  
18 touching her vaginal area; is that correct?

19           **THE DEFENDANT:** Yes, Your Honor.

10:27:06AM 20           **THE COURT:** You asked her to send nude pictures of  
21 herself to you; is that right?

22           **THE DEFENDANT:** Yes, Your Honor.

23           **THE COURT:** And she did that?

24           **THE DEFENDANT:** Yes, Your Honor.

10:27:22AM 25           **THE COURT:** And do you understand that those

1 photographs, nude photographs of this minor constituted child  
2 pornography?

3 Do you agree with that?

4 **THE DEFENDANT:** Yes, Your Honor.

10:27:34AM 5 **THE COURT:** Do you understand the photographs  
6 traveled in interstate commerce from New York -- you were in  
7 Massachusetts at that time; is that correct?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** She was in New York?

10:27:47AM 10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** And using Instagram, do you understand  
12 that operates by using the internet, which is a means or  
13 facility of interstate and foreign commerce?

14 **THE DEFENDANT:** Yes, Your Honor.

10:28:00AM 15 **THE COURT:** Okay. And you received this child  
16 pornography on what instrument?

17 **THE DEFENDANT:** LG smart phone.

18 **THE COURT:** Okay. And did you come to understand  
19 that at some point that that phone had been manufactured out  
10:28:16AM 20 of the United States, specifically Vietnam?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** And at all times did you act knowingly  
23 knowing that what you had received constituted child  
24 pornography?

10:28:33AM 25 **THE DEFENDANT:** Yes, Your Honor.

1           **THE COURT:** Next I want to discuss with you the  
2 sentencing guidelines. Do you understand the Court must  
3 consider the guidelines, but I'm not bound by those?

4           Do you understand that?

10:28:45AM 5           **THE DEFENDANT:** Yes, Your Honor.

6           **THE COURT:** Do you understand this charge carries a  
7 base offense level of 32?

8           There's a six level increase based upon the minor  
9 being over the age of 12, but under the age of 16.

10:29:05AM 10           There's a two level increase based upon the use of  
11 a computer.

12           **THE DEFENDANT:** Yes, Your Honor.

13           **THE COURT:** That results in an adjusted offense  
14 level of 36.

10:29:19AM 15           You then receive a three level downward adjustment  
16 for your acceptance of responsibility, resulting in a total  
17 offense level of 33.

18           Do you understand that?

19           **THE DEFENDANT:** Yes, Your Honor.

10:29:30AM 20           **THE COURT:** The second part of calculating  
21 somebody's sentence under the guidelines is their criminal  
22 history category. My understanding, your criminal history  
23 category is a level III.

24           When that's combined with a total offense level of  
10:29:46AM 25 33, do you understand the guidelines range of sentencing

1 involves a period of imprisonment between 168 months and 210  
2 months?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** Involves a fine between \$35,000 and  
10:30:02AM 5 \$250,000?

6 **THE DEFENDANT:** Yes, Your Honor.

7 **THE COURT:** And a period of supervised release of  
8 between five years and life.

9 Do you understand that?

10:30:11AM 10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Do you understand regardless of the  
12 guidelines, you're subject to both the minimum and maximum  
13 penalties?

14 **THE DEFENDANT:** Yes, Your Honor.

10:30:21AM 15 **THE COURT:** And in this agreement both you and the  
16 Government have reserved your right to recommend a sentence  
17 outside that guideline range I just discussed.

18 Do you understand that as well?

19 **THE DEFENDANT:** Yes, Your Honor.

10:30:35AM 20 **THE COURT:** Do you understand that if this plea is  
21 withdrawn, vacated or set aside, the original charges would be  
22 refiled and you're waiving what's called the "statute of  
23 limitations defense" or the time limit for refileing those  
24 charges?

10:30:52AM 25 **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** Are you a citizen of the United States?

2                   **THE DEFENDANT:** Yes, Your Honor.

3                   **THE COURT:** Do you understand if for some reason  
4 it's found that you are not a citizen of the United States, do  
10:31:05AM 5 you understand based upon a conviction for this crime you  
6 could be removed from the United States, denied citizenship,  
7 or denied admission to the United States in the future?

8                   **THE DEFENDANT:** Yes, Your Honor.

9                   **THE COURT:** That the Government has reserved their  
10:31:19AM 10 right to provide Probation and the Court with information  
11 regarding this case as well as your background, character and  
12 involvement in the offense charged.

13                   **THE DEFENDANT:** Yes, Your Honor.

14                   **THE COURT:** That they can respond at the time of  
10:31:36AM 15 sentencing to statements you make or made on your behalf.

16                   **THE DEFENDANT:** Yes, Your Honor.

17                   **THE COURT:** They can advocate for a sentence  
18 consistent with this agreement.

19                   **THE DEFENDANT:** Yes, Your Honor.

10:31:51AM 20                   **THE COURT:** That includes they may oppose an  
21 application for a downward departure or a sentence outside the  
22 guidelines.

23                   Do you understand that?

24                   **THE DEFENDANT:** Yes, Your Honor.

10:32:01AM 25                   **THE COURT:** And at the time of sentencing the

1 Government will move to dismiss the remaining counts of the  
2 superseding indictment.

3 Do you understand that as well?

4 **THE DEFENDANT:** Yes, Your Honor.

10:32:14AM 5 **THE COURT:** Do you agree to provide financial  
6 records and information to Probation, which in turn may be  
7 disclosed to the United States Attorney's Office for the  
8 collection of any unpaid financial obligations, including  
9 fines, assessments or restitution?

10:32:34AM 10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** And that you are limiting your right to  
12 appeal the sentence in this case. If, in fact, the Court  
13 imposes a sentence in accordance with the plea agreement of  
14 the guidelines or less, notwithstanding the manner in which  
10:32:52AM 15 the Court determines the sentence, do you understand you're  
16 waiving your right to attack or appeal that sentence in any  
17 way?

18 **THE DEFENDANT:** Yes, Your Honor.

19 **MR. ROSSI:** Judge, I apologize for interrupting.  
10:33:05AM 20 May I just clarify that? The appeal will be waived if the  
21 Court sentences him specifically to -- between 168 months and  
22 210 months imprisonment.

23 **THE COURT:** It says "or less."

24 **MR. ROSSI:** Or less, yes.

10:33:19AM 25 **THE COURT:** I said less.

1           **MR. ROSSI:** I just didn't hear. I may have missed  
2 it, but I didn't hear the Court say the specific number of  
3 months that were included in the sentence provision.

4           **THE COURT:** I did. I said the guidelines, the  
10:33:33AM 5 guideline range or less.

6           Do you understand that?

7           **THE DEFENDANT:** Yes, Your Honor.

8           **THE COURT:** Okay. Do you understand that you are  
9 forfeiting certain property? In other words, giving up any  
10:33:42AM 10 interest or claim to the property and that property in turn  
11 will be turned over to the United States for disposition or  
12 destruction.

13           **THE DEFENDANT:** Yes, Your Honor.

14           **THE COURT:** And that the property specifically is  
10:33:53AM 15 one LG smart phone.

16           Do you understand that?

17           **THE DEFENDANT:** Yes, Your Honor.

18           **THE COURT:** Is there anything about this agreement  
19 that you do not understand?

10:34:03AM 20           **THE DEFENDANT:** No, Your Honor.

21           **THE COURT:** Do you have any questions you want to  
22 ask your attorney Mr. Ciccone?

23           **THE DEFENDANT:** No, Your Honor.

24           **THE COURT:** Has the agreement been signed,  
10:34:12AM 25 Mr. Ciccone?

1           **MR. CICCONE:** Judge, yes. I know Mr. Rossi signed  
2 it and I signed it. Then I sent it to Mr. Salerno. I think  
3 he's already signed it.

4           **THE COURT:** Do we have a signed copy yet?

10:34:25AM 5           **THE CLERK:** No.

6           **THE COURT:** Do you have it in front of you,  
7 Mr. Salerno?

8           **THE DEFENDANT:** Yes, Your Honor, it's right here.

9           **THE COURT:** Have you signed it?

10:34:39AM 10           **THE DEFENDANT:** I signed it, Your Honor.

11           **THE COURT:** Okay. Do you understand that by signing  
12 that agreement you're acknowledging your full understanding of  
13 the agreement?

14           **THE DEFENDANT:** Yes, Your Honor.

10:34:48AM 15           **THE COURT:** Okay. What about the Waiver of  
16 Indictment, Mr. Ciccone? Does he have that as well?

17           **MR. CICCONE:** He does, yes.

18           **THE COURT:** Okay. Mr. Salerno, do you have another  
19 document in front of you called Waiver of Indictment?

10:35:02AM 20           **THE DEFENDANT:** Yes, Your Honor, it's right here.

21           **THE COURT:** Have you signed that?

22           **THE DEFENDANT:** Yes, Your Honor.

23           **THE COURT:** And do you understand by signing that  
24 document you're giving up your right to have this matter

10:35:11AM 25 presented to the grand jury and instead you're agreeing to be



1 prosecuted by a one count information filed by the United  
2 States Attorney that has the same force and effect as an  
3 indictment filed by the grand jury?

4 **THE DEFENDANT:** Yes, Your Honor.

10:35:27AM 5 **THE COURT:** Do you have any questions about the  
6 waiver process?

7 **THE DEFENDANT:** No, Your Honor.

8 **THE COURT:** Based upon that the Court will approve  
9 the Waiver of Indictment.

10:35:37AM 10 Is your client ready to proceed, Mr. Ciccone?

11 **MR. CICCONE:** Yes, Judge.

12 **THE COURT:** Mr. Salerno, I'm going to read to you  
13 this one count information and at the end I'll ask you how you  
14 plead to that charge, guilty or not guilty.

10:35:50AM 15 This charges you with receipt of child pornography.

16 Indicates on or about and between June 21, 2019, and November  
17 26th, 2019, in the Western District of New York and elsewhere,  
18 that you the defendant, Frank Salerno, did knowingly receive  
19 child pornography, that is, images depicting lascivious

10:36:23AM 20 exhibition of the genitals of a minor victim that had been  
21 shipped and transported using any means and facility of  
22 interstate and foreign commerce that had been shipped and  
23 transported in and affecting interstate and foreign commerce  
24 by any means, including by computer.

10:36:49AM 25 I'll ask you how you plead to that charge of

1 receipt of child pornography, guilty or not guilty?

2 **THE DEFENDANT:** Guilty, Your Honor.

3 **THE COURT:** The Court's had the opportunity to speak  
4 with the defendant Frank Salerno. He's 30 years of age.  
10:37:07AM 5 Completed high school.

6 Indicates he takes medications for anxiety.  
7 However, that is not affecting his ability to understand these  
8 proceedings. He has no other health or medical condition  
9 affecting his ability to understand these proceedings.

10:37:24AM 10 Nobody's forced him, coerced him or threatened him  
11 to enter a plea of guilty.

12 He discussed this matter with his attorney  
13 Mr. Ciccone. He's satisfied with his representations. He  
14 understands he has a right to counsel throughout this  
10:37:39AM 15 proceeding right through the time of sentencing.

16 He understands he has a right to persist or  
17 continue in his plea of not guilty. However, when he does  
18 plead guilty, he gives up certain rights, including his right  
19 to have a trial by jury or judge; his right to allow his  
10:37:57AM 20 attorney to cross-examine witnesses on his behalf; his right  
21 to have the Government prove this case against him beyond a  
22 reasonable doubt.

23 If the matter did go to trial, he understands he  
24 could testify, present evidence, and subpoena witnesses for  
10:38:13AM 25 trial. However, he could not be compelled to do any of that

1 because he has a presumption of innocence, and the burden of  
2 proof rests on the Government.

3 That he's waiving indictment and giving up his  
4 right to have this matter presented to a grand jury. Instead,  
10:38:31AM 5 he's agreeing to be prosecuted by a one count information  
6 charging him with receipt of child pornography.

7 That charge carries a mandatory minimum sentence of  
8 a term of imprisonment of five years and a maximum term of 20  
9 years, a fine up to \$250,000, and a \$100 special assessment,  
10:38:51AM 10 and a term of supervised release of five years up to life.

11 That the Court must impose an assessment of not  
12 more than \$17,000 for this particular conviction.

13 That if he's sentenced to a period of supervised  
14 release and violates the conditions, he could receive up to  
10:39:11AM 15 two years imprisonment without receiving credit for the time  
16 he had already served on supervised release.

17 In addition, if he committed certain offenses while  
18 on supervised release as articulated in this agreement for  
19 which a term of imprisonment of greater than one year could be  
10:39:29AM 20 imposed, he understands by violating the conditions of  
21 supervised release he then could be sentenced to a term of not  
22 less than five years up to life.

23 Based upon a conviction for this charge he must  
24 register under the Sex Offender Registration and Notification  
10:39:49AM 25 Act, notify authorities where he may reside, be employed, or

1 attend school.

2 He understood the elements of this charge that the  
3 Government would need to prove beyond a reasonable doubt  
4 before he could be convicted at trial.

10:40:06AM 5 He articulated a factual basis, admitting that  
6 between June 21st, 2019, and November 26th, 2019, when he was  
7 between the ages of 29 and 30 living in the State of  
8 Massachusetts, that he engaged in sexually explicit  
9 conversations by way of Instagram with a 14-year-old victim  
10 female who was within the Western District of New York.

11 That he had that victim send him photographs of  
12 sexually explicit conduct, specifically for depicting  
13 lascivious exhibition of her genitals. Those were produced  
14 and sent to him; that he understood that to constitute child  
10:41:01AM 15 pornography. That the photographs traveled in interstate  
16 commerce from New York to Massachusetts by way of Instagram,  
17 which operates using the internet.

18 In addition, he understands that the LG smart phone  
19 was utilized to receive these particular photographs and that  
10:41:25AM 20 smart phone was manufactured in Vietnam.

21 At all times he acted knowingly in that he knew  
22 what he received constituted child pornography.

23 He understood the calculation of the sentencing  
24 guidelines that the Court must consider, but is not bound by .

10:41:43AM 25 That this carries a base offense level of -- what's

1 that?

2 **THE DEFENDANT:** Yes, Your Honor, I understand.

3 **THE COURT:** Okay. Base offense level of 32.

4 There's a two level increase based upon the victim  
10:41:56AM 5 being over the age of 12 and under the age of 16.

6 Two level increase for the use of a computer.

7 Three level downward adjustment for his acceptance  
8 of responsibility, resulting in a total offense level of 33.

9 His criminal history category is a level III. When  
10:42:14AM 10 that's combined with a total offense level of 33 results in a  
11 sentencing range under the guidelines of a term of  
12 imprisonment of 168 to 210 months, a fine between \$35,000 and  
13 \$250,000, and a period of supervised release of five years up  
14 to life.

10:42:35AM 15 He understands that he is subject to the minimum  
16 and maximum penalties regardless of the guidelines.

17 That both the Government and the defendant have  
18 reserved their right to recommend a sentence outside the  
19 guideline range.

10:42:52AM 20 If this plea is withdrawn, vacated or set aside,  
21 the original charges would be refiled and the defendant's  
22 waiving his right to advance the statute of limitations  
23 defense or the time limit for refiling those charges.

24 He indicates he is a citizen of the United States.  
10:43:09AM 25 If for some reason it's found that he is not, he understands

1 he could be removed from the United States, denied  
2 citizenship, or denied admission to the United States in the  
3 future based upon a conviction for this offense.

4 He understands the Government has reserved their  
10:43:28AM 5 right to provide Probation and the Court with information  
6 regarding this case, as well as the defendant's background,  
7 character, and involvement in the offense charged.

8 They can respond at the time of sentencing to  
9 statements he makes or made on his behalf.

10:43:44AM 10 They can advocate for a sentence consistent with  
11 this agreement and may oppose an application for a downward  
12 departure or sentence outside the guideline range.

13 At the time of sentencing the Government will move  
14 to dismiss the remaining counts of the superseding indictment.

10:44:05AM 15 He agrees to provide financial records and  
16 information to Probation, which in turn may be disclosed to  
17 the United States Attorney's Office for the collection of any  
18 unpaid financial obligations including fines, assessments or  
19 restitution.

10:44:22AM 20 That he's limiting his right to appeal the sentence  
21 imposed in this case. If, in fact, the Court imposed a  
22 sentence in accordance with the guidelines of 168 to 210  
23 months imprisonment or less, notwithstanding the manner in  
24 which the Court determines the sentence, he's waiving or  
10:44:40AM 25 giving up his right to appeal or in any way attack that

1 sentence.

2 Finally, he's forfeiting one LG smart phone which  
3 means he will give up any claim or interest to that property,  
4 which in turn will be turned over to the United States for  
10:44:59AM 5 disposition or destruction.

6 Mr. Salerno indicated he had no questions of his  
7 counsel throughout the plea colloquy.

8 Based upon his responses, the Court finds that the  
9 plea is in all respects knowing and voluntary. He did  
10:45:14AM 10 articulate a factual basis to support the charge of receipt of  
11 child pornography. Therefore, the Court accepts the plea of  
12 guilty.

13 How about October 1st at --

14 **MR. CICCONE:** Judge, I'm actually scheduled to start  
10:45:52AM 15 a trial that week.

16 **THE COURT:** Okay. Do you want to go the following  
17 week or a week before? What works better for you?

18 **MR. CICCONE:** Either of those is fine.

19 **THE COURT:** So you're available the week of the 5th?

10:46:04AM 20 **MR. CICCONE:** Yes.

21 **THE COURT:** How about October 8th at 2 p.m.?

22 **MR. CICCONE:** Sure, that's fine.

23 **MR. ROSSI:** I didn't hear the time, Judge.

24 **THE COURT:** 2 p.m.

10:46:15AM 25 **MR. ROSSI:** 2 p.m.? Yes, thank you, Judge.

1           **THE COURT:** In the meantime, the defendant's  
2 detained pending sentence; is that correct?

3           **MR. ROSSI:** Yes, Judge.

4           **THE COURT:** Okay. All right. Mr. Salerno, you will  
10:46:29AM 5 be contacted at some point by Probation. Make sure you stay  
6 in contact with Mr. Ciccone. If you're contacted by Probation  
7 or anybody else, make sure you let him know that.

8           Do you understand?

9           **THE DEFENDANT:** Yes, Your Honor.

10:46:40AM 10           **THE COURT:** Okay. All right, thank you.

11           (WHEREUPON, proceedings adjourned at 10:46 a.m.)

12                           \*     \*     \*

13                           **CERTIFICATE OF REPORTER**

14  
15           In accordance with 28, U.S.C., 753(b), I certify that  
16 these original notes are a true and correct record of  
17 proceedings in the United States District Court for the  
18 Western District of New York before the Honorable Frank P.  
19 Geraci, Jr. on July 9th, 2020.

20  
21   S/ Christi A. Macri

22   Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)  
23   Official Court Reporter  
24  
25